

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ERIC S KEMP,
Plaintiff,

v.

CALIFORNIA CORRECTIONAL
HEALTHCARE SERVICES,
Defendant.

Case No. [24-cv-07281-TLT](#)

**ORDER DENYING PLAINTIFF'S
MOTION FOR LEAVE TO APPEAL *IN*
FORMA PAUPERIS; VACATING
JUDGMENT AND REOPENING CASE**

Re: Dkt. No. 16

The Court previously dismissed plaintiff's case and entered judgment on March 6, 2025 after plaintiff did not file an amended complaint within the time allowed. Dkt. Nos. 10, 11. Plaintiff subsequently wrote a letter to the Court stating that he had not been aware of any deadline to file his amended complaint, and attached his proposed amended complaint. Dkt. No. 13. The Court construed the letter as a request to reopen the case, and denied the request on September 16, 2025 because the proposed amended complaint did not state a cognizable claim. Dkt. No. 14. On October 30, 2025, plaintiff filed a motion for leave to appeal *in forma pauperis* and indicated that he believes "the district court erred in dismissing complaint without leave to amend." Dkt. No. 16.

Plaintiff's motion is denied because the Court's dismissal and entry of judgment was without prejudice. The Court has not denied leave to amend, but rather dismissed for failure to amend, and subsequently did not reopen the case upon plaintiff's filing a proposed First Amended Complaint. The Court now vacates the judgment and reopens the case in order to allow plaintiff to file a Second Amended Complaint.

As previously noted, plaintiff's proposed FAC did not state a cognizable claim because he has not alleged that doing the extraction at the prison with local anesthesia would be a medically unacceptable route nor involve an excessive risk to his health. *See Toguchi v. Chung*, 391 F.3d

1051, 1058 (9th Cir. 2004). Nor has he alleged any disability for which he requires accommodations.

For the foregoing reasons, the Court orders as follows:

1. The Clerk shall vacate the prior judgment and reopen the case.
2. Within twenty-eight (28) days of the date of this order, plaintiff may file a second amended complaint (SAC) that addresses the identified deficiencies. The SAC must include the caption and civil case number used in this order, and the words “SECOND AMENDED COMPLAINT” on the first page. If using the court form complaint, plaintiff *must answer all the questions on the form* for the action to proceed. An amended complaint completely replaces the previous complaints. *See Lacey v. Maricopa Cnty.*, 693 F.3d 896, 925 (9th Cir. 2012). Accordingly, plaintiff must include in his amended complaint all the claims he wishes to present and all the defendants he wishes to sue and may not incorporate material from the prior complaint by reference. Failure to file an amended complaint in accordance with this order in the time provided will result in dismissal of this action without further notice to plaintiff.

3. The Clerk shall include a copy of the court’s complaint form with a copy of this order to plaintiff.

IT IS SO ORDERED.

Dated: November 4, 2025


TRINA L. THOMPSON
United States District Judge